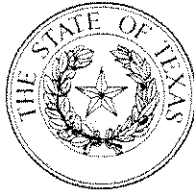


State Office of Administrative Hearings



Cathleen Parsley
Chief Administrative Law Judge

March 24, 2011

Les Trobman, General Counsel
Texas Commission on Environmental Quality
P.O. Box 13087
Austin Texas 78711-3087

VIA FACSIMILE 512/239-5533

**Re: SOAH Docket No. 582-09-2078; TCEQ Docket No. 2006-1140-MSW-E; In
Re: DORAY HILL AND DIANE HILL**

Dear Mr. Trobman:

The administrative law judge (ALJ) has reviewed the exceptions and supplementary exceptions filed by the Executive Director (ED). Respondents filed no exceptions to the Proposal for Decision and filed no responses to the Executive Director's exceptions. The ALJ makes the following recommendations:

1. The ED requested that the style of the case be revised to conform to the ED's revisions to the proposed Order.

The ED gave no reason for his request. The proposed change should not be adopted.

2. The ED requested that all Respondents be assessed both the penalty and corrective action.

The ED gave no reason for his request. The proposed change should not be adopted.

3. The ED requested that the introductory paragraph of the PFD delete references to a "third" amended petition and substitute references to a "second" amended petition.

The proposed change should be adopted.

4. In Finding of Fact No. 8, the ED requested that the term "original" be replaced by the terms "preliminary report and" to provide clarification.

The proposed change should be adopted.

5. In Finding of Fact No. 12, the ED requested that the date of "October 15, 2010" and the word "and" be deleted.

The proposed change should be adopted.

6. In Finding of Fact No. 14, the ED requested that the spelling of Mr. Sallans' name be corrected.

The proposed change should be adopted.

7. In Finding of Fact No. 19, the ED requested that the title, "a Department of Public Safety pilot," be changed to "the TCEQ Employee that conducted the investigation," to reflect the correct name of the witness.

The proposed change is unnecessary and should not be adopted.

8. In Conclusions of Law Nos. 24, 25, and 26, the ED requested that the conclusions of law be deleted because the cases cited in these conclusions of law regard cost recovery actions and not enforcement actions.

The proposed changes should not be adopted. The cases cited reflect the holdings stated in the opinions. The holdings are apposite to the issues raised by the parties in this case. The holdings are binding on public agencies.

9. In Conclusion of Law No. 28, the ED requested that the paraphrased portions of the Texas Water Code be replaced by the entire statute because the ED believes that by including the language of the entire statute: (1) the Order would ensure consistent application of assessed penalties and would deter continuing and future violations; and (2) the Order would reduce actual and potential impact on the public health and the environment.

The proposed change is unnecessary and should not be adopted.

10. In Conclusion of Law No. 28, the ED requested that the applicable administrative penalties and corrective actions should be assessed against all Respondents because all Respondents have an ownership interest in the contaminated property.

The proposed change should not be adopted for the reasons stated in the Proposal for Decision.

11. In Conclusion of Law No. 29, the ED requested deletion of the terms "Because Respondents", "and", and "were aware of the Property and of the economic benefits that they were deriving from the Property, the administrative penalty should be imposed on these persons." The ED's purpose was to recommend the assessment of a penalty against all of the Respondents.

The proposed change should not be adopted for the reasons stated in the Proposal for Decision.

12. In Conclusion of Law No. 30, the ED requested that the language be revised and combined with the language of Conclusion of Law No. 29 to reflect that a penalty be imposed against all Respondents.

The proposed change should not be adopted for the reasons stated in the Proposal for Decision.

13. In Conclusion of Law No. 31 and Ordering Provision No. 1, the ED requested the removal of the names Diane Hill, James Carter, Joe Carter, Getrell A. Carter, Gerald E. Carter, Lee Otis Carter, Grady Goodley, Coline Knox and Nokomis Hill.

The proposed change should not be adopted for the reasons stated in the Proposal for Decision.

14. In Ordering Provision No. 2, the ED requested the use of this language: "Immediately upon the effective date of this Order, cease accepting any additional municipal solid waste at the facility." In addition, the ED requested that Ordering Provision No. 2 include, "Within 180 days, of the effective date of this Order, unless extended, Respondents, shall remove and dispose of all scrap tires on the Property at an authorized facility."

The proposed change should not be adopted. The ED did not prove that Respondents ever accepted any municipal solid waste at the Property or that 180 days would be sufficient for the removal or disposal of the scrap tires on the Property.

15. In Ordering Provision No. 4, the ED requested that a copy of the certifications should be sent to the Waste Section Manager.

The proposed change should be adopted.

Sincerely,

A handwritten signature in black ink, appearing to read "Paul D. Keeper", written over a horizontal line.

Paul D. Keeper
Administrative Law Judge

PDK:cm

cc: Service List; Sent Via Facsimile

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STYLE/CASE: DORAY HILL AND DIANE HILL

SOAH DOCKET NUMBER: 582-09-2078

REFERRING AGENCY CASE: 2006-1140-MSW-E

**STATE OFFICE OF ADMINISTRATIVE
HEARINGS**

**ADMINISTRATIVE LAW JUDGE
ALJ PAUL D. KEEPER**

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Xc: Docket Clerk, State Office of Administrative Hearings